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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIFTH APPELLATE DISTRICT

Estate of JUAN ENRIQUE FIERROS, Deceased.	
AGUSTIN GUZMAN, Petitioner and Appellant, v. JUAN MEDINA MENDOZA, Objector and Respondent.	F077839 (Super. Ct. No. BPB-16-002674) **OPINION**

APPEAL from an order of the Superior Court of Kern County. Andrew Kendall, Temporary Judge. (Pursuant to Cal. Const., art. VI, § 21.)

Hymes, Schreiber & Walden and Douglas K. Schreiber; Ferguson Case Orr Paterson, Wendy C. Lascher and John A. Hribar, for Petitioner and Appellant.

Hulsy & Hulsy Law Offices and James R. Hulsy for Objector and Respondent.

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In this probate case, the trial court denied a petition by appellant Agustin Guzman, in his capacity as personal representative of the estate of Juan Enrique Fierros (Father Fierros), to determine title and require transfer to the estate of two houses located in Delano, California. The two houses had been owned by Father Fierros, but respondent Juan Medina Mendoza deeded both properties to himself pursuant to a power of attorney on the day before Father Fierros passed away. The petition challenged the validity of the conveyances. After a brief trial, the trial court upheld the grant deeds executed by Mendoza under the power of attorney. Guzman appeals, contending the grant deeds were void because the power of attorney did not authorize Mendoza, as attorney-in-fact, to donate Father Fierros's real property to himself. We agree. Accordingly, the order of the trial court is reversed, and the matter is remanded to the trial court with directions to enter a new order granting the petition, voiding the grant deeds, and confirming title in appellant Guzman as personal representative of the estate.

FACTS AND PROCEDURAL HISTORY

Juan Enrique Fierros, referred to herein as Father Fierros, was a Catholic priest and pastor of St. Mary's Church in Delano, California. From 1996 to 2000, Mendoza worked directly for Father Fierros, doing work at St. Mary's Church and school, and also making repairs on Father Fierros's property in Reedley. From 2000 to 2016, Mendoza was employed by St. Mary's Church. On Mendoza's days off, Father Fierros would sometimes ask him to clean his houses in Reedley. When Mendoza worked at Father Fierros's Reedley property, he was not paid by the church, but Father Fierros would give him $100 or $200 in cash.

Mendoza also traveled with Father Fierros on some occasions. When that happened, Father Fierros would always pay the travel expenses. Father Fierros once paid for Mendoza to accompany him on a three-week visit to Rome. Mendoza was needed on that trip because Father Fierros had recently broken his leg and needed assistance with

walking. Mendoza also drove Father Fierros to UCLA for surgery, cancer treatments and other medical appointments when needed.

The Two Delano Properties

Father Fierros resided in a house he owned in Reedley, California. In 2001, Father Fierros purchased a house on West 15th Place in Delano for $62,000. Mendoza did not contribute any money toward the purchase and was not on the title. Mendoza moved into the house on West 15th Place in 2001 and paid $500 per month in rent. Mendoza continued to pay $500 in rent each month until Father Fierros died in May 2016. Since that time, Mendoza has continued living in the house on West 15th Place in Delano.

According to Mendoza, Father Fierros had plans to make the house on West 15th Place his future retirement home. The house was in poor condition and needed a lot of work, so Mendoza and Father Fierros began fixing up the house together. They worked on the house together for 15 years, with Mendoza and Father Fierros sharing the cost of the expenses about 50/50. Mendoza testified that he thought the house would eventually belong to him. However, eventually Father Fierros decided he would not retire to the house on West 15th Place after all; a bigger house was needed for that purpose.

In 2004 or 2005, Father Fierros purchased another house in Delano, this one on Thomas Way, for a purchase price of $110,000. Mendoza did not contribute any money toward the purchase and was not on the title. Neither Mendoza nor Father Fierros lived at the Thomas Way property. The property was rented out for a period of time, but the renters did a lot of damage. When Father Fierros was diagnosed with cancer in 2011, he made the renters move out of the Thomas Way property. His intention was to use the Thomas Way property for his home. He told Mendoza he wanted to make the house bigger so that he could live in the back part of the house and Mendoza's family could live in the front part. Mendoza was married and had two children. The goal was apparently to have Mendoza be a caretaker during Father Fierros's cancer treatment and recovery. If

Mendoza had moved into the Thomas Way house, the other Delano house on West 15th Place would have been rented out at $800 per month.

Father Fierros and Mendoza worked together on the Thomas Way house, especially in the four-year period after Father Fierros was diagnosed with cancer. Mendoza finished the repairs on the Thomas Way house sometime after Father Fierros died. Mendoza does not have a record of how much money he put into the house. They split the cost of the repairs equally for the last four years they worked on it, but Father Fierros paid all the expenses before that.

Mendoza's Assistance During Cancer Treatments

Father Fierros was diagnosed with cancer in 2011 and he asked Mendoza to help take care of him. Mendoza took Father Fierros to medical appointments at UCLA, sometimes as often as twice a week. To get to UCLA, they would leave early in the morning, around 2:00 a.m., and would return in the afternoon around 1:00 p.m., after which Mendoza would resume his normal job responsibilities at the church. Mendoza took Father Fierros to many other doctor appointments as well. The cancer was impacting Father Fierros's liver, and he needed a liver transplant. Father Fierros was placed on the list to receive a liver transplant. In 2015, UCLA medical staff called to inform Father Fierros they had found a liver for him; however, before Father Fierros and Mendoza could get there, the liver failed and could not be used.

Father Fierros Appoints Mendoza as Attorney-in-Fact

After the failed liver transplant, Father Fierros made an appointment to see his attorney. In December of 2015, Father Fierros signed a durable power of attorney drafted by a member of the attorney's office staff. In the power of attorney, Father Fierros named Mendoza to be his agent or attorney-in-fact. The power of attorney contained the following warning statement to the person appointed to serve as attorney-in-fact: "You may not transfer the principal's property to yourself without full and adequate consideration or accept a gift of the principal's property unless this power of attorney

specifically authorizes you to transfer property to yourself or accept a gift of the principal's property." Mendoza signed the power of attorney directly below this statement, but he did not recall reading those words. The power of attorney did not, in any of its terms or provisions, specifically authorize the attorney-in-fact to transfer the principal's property to himself without full and adequate consideration. According to the attorney's staff person who prepared the power of attorney, it was prepared exactly how Father Fierros wanted it.

Mendoza Conveys the Delano Properties to Himself

On May 10, 2016, the day before Father Fierros died, Mendoza signed two grant deeds in his capacity as Father Fierros's attorney-in-fact, transferring the West 15th Place and the Thomas Way properties to himself as gifts.

According to Mendoza, Father Fierros asked him to go to Sylvia's Clerical to have the two deeds prepared by a notary there for Mendoza to sign. Mendoza had the notary, Sylvia, prepare the grant deeds, as instructed. Each of the grant deeds indicated the transfer was a gift. When the grant deeds were prepared, Mendoza read them and signed the grant deeds as Father Fierros's attorney-in-fact.

Trial Court's Ruling

Father Fierros died intestate on May 11, 2016. On September 1, 2016, appellant Guzman was appointed administrator of Father Fierros's estate. Guzman proceeded to file a petition under Probate Code section 850 to determine title to and require the transfer (to the estate) of the Delano properties on West 15th Place and Thomas Way. The petition alleged, among other things, that the conveyances were not authorized. Mendoza denied the allegations and the matter proceeded to a brief one-day trial. The parties also submitted briefing to the trial court.

The trial court's ruling was issued on May 8, 2018. In that ruling, the trial court acknowledged that Mendoza "was the gardener, business partner, sometime caretaker and friend of the decedent." The trial court noted that Probate Code sections 4264 and 21380

prohibit an attorney-in-fact from making donative transfers of the principal's property to himself under a power of attorney "absent an explicit authorization" in the power of attorney, and the trial court found that "[n]o explicit authorization [was] present" in the power of attorney in this case. Further, the trial court found that the grant deeds constituted "donative" transfers (i.e., gifts), that Mendoza executed the grant deeds as " 'attorney in fact,' " and that he did not act as an "amanuensis" under the rule set forth in *Estate of Stephens* (2002) 28 Cal.4th 665.

Despite the above findings, the trial court did not address the issue of whether Mendoza was authorized by law to execute the grant deeds under the power of attorney, but instead reduced the case down to a question of whether Mendoza had rebutted the presumption of fraud and undue influence under Probate Code section 21380. The trial court found there was clear and convincing evidence that the donative transfers were not the product of fraud or undue influence. Therefore, the trial court concluded "the donative transfers were valid." Accordingly, the relief sought in Guzman's petition was denied.

Guzman's timely notice of appeal followed.

DISCUSSION

I. Standard of Review

In his opening brief, Guzman frames the issue on appeal as "whether a valid transfer of real property requires a signature by the transferor or by the transferor's agent authorized by writing or whether oral permission to the agent is sufficient." We believe that Guzman has fairly identified the primary issue before us. In other words, the present appeal largely concerns the issue of whether the trial court applied the correct legal standard, which is a question of law. We independently review questions of law (*Hill v. City of Long Beach* (1995) 33 Cal.App.4th 1684, 1687), including the proper application of statutory provisions to a given situation. (*Estate of Madison* (1945) 26 Cal.2d 453, 456.) Additionally, where dispositive facts are materially undisputed and the question is

whether the trial court applied the correct legal standard under such facts, we review the trial court's ruling de novo. (*Ghirardo v. Antonioli* (1994) 8 Cal.4th 791, 799.) To the extent that our review requires a consideration of the correctness of one or more of the trial court's findings of fact, such facts are reviewed under the substantial evidence standard. (*Shields v. Shields* (1962) 200 Cal.App.2d 99, 102.)

II. The Grant Deeds Are Void

As noted, Father Fierros's power of attorney provided the following notice to Mendoza as the person accepting the appointment as attorney-in-fact: "You may not transfer the principal's property to yourself without full and adequate consideration or accept a gift of the principal's property unless this power of attorney specifically authorizes you to transfer property to yourself or accept a gift of the principal's property." Further, as the trial court correctly found, the power of attorney does not explicitly authorize Mendoza to transfer Father Fierros's property to himself as a gift or without full and adequate consideration. If there were any possible uncertainty, of which there is none, Probate Code section 4264 removes it by stating in relevant part as follows: "An attorney-in-fact under a power of attorney may perform any of the following acts on behalf of the principal or with the property of the principal only if the power of attorney expressly grants that authority to the attorney-in-fact: [¶] … [¶] (c) Make or revoke a gift of the principal's property in trust or otherwise." (Prob. Code, § 4264; see also Prob. Code, § 4465 [a statutory form power of attorney "does not empower the agent to take any of the actions specified in Section 4264 unless the statutory form power of attorney expressly grants that authority to the attorney-in-fact"].)

The legal effect of an attorney-in-fact purporting to make a conveyance of real property to himself as a gift where such an action is beyond the powers conferred in the power of attorney is that the conveyance is void. " 'A power of attorney conferring authority to sell, exchange, transfer or convey real property for the benefit of the principal does not authorize a conveyance as a gift or without substantial consideration [citations];

and a conveyance without the scope of the power conferred is void.' " (*Estate of Stephens, supra,* 28 Cal.4th at p. 672, quoting with approval *Shields v. Shields, supra,* 200 Cal.App.2d 99, 101; accord, *Estate of Huston* (1997) 51 Cal.App.4th 1721, 1726.)

Moreover, a conveyance that is beyond the scope of the powers conferred in a power of attorney cannot be salvaged by an oral assent to the conveyance. In *Estate of Huston*, *supra*, 51 Cal.App.4th 1721, an attorney-in-fact acting under a power of attorney granted to himself the right to receive an annuity owned by the principal worth approximately $90,000. (*Id*. at pp. 1722–1725.) The attorney-in-fact testified that the principal had given him oral assent to make this gift to himself, and the trial court upheld the validity of the gift. (*Id*. at pp. 1724–1725.) The Court of Appeal reversed despite substantial evidence in the record that the attorney-in-fact acted with the decedent's knowledge, consent and approval. (*Id*. at p. 1727.) Applying the rule set forth in *Shields v. Shields*, the Court of Appeal in *Estate of Huston* ruled the conveyance was void. (*Estate of Huston,* at pp. 1726–1727 [a gift or conveyance outside the scope of the power conferred in the power of attorney is void].) As to the principal's oral assent to the gift, the Court of Appeal explained as follows: "A question therefore arises whether decedent's oral assent to the gift served to ratify the transaction and make the gift valid. We conclude that it did not. 'A power of attorney is a written authorization to an agent to perform specified acts on behalf of the principal. [Citation.] …' [Citation.] Ratification of an agent's act 'can be made only in the manner that would have been necessary to confer an original authority for the act ratified, …' (Civ. Code, § 2310.) Because a power of attorney must be in writing, any act performed by the agent acting under the power of attorney must therefore be ratified in writing to be valid. [¶] Even though, from the evidence at trial, it is apparent decedent in fact wished to make a gift to [the attorney-in-fact], nonetheless, she failed to comply with the formalities necessary to do so, such as by modifying [the attorney-in-fact's] authority under the power of attorney or

by executing another codicil to her will. We therefore conclude the gift was void." (*Estate of Huston*, *supra*, 51 Cal.App.4th at p. 1727, fn. omitted.)

In *Estate of Stephens*, *supra*, 28 Cal.4th 665, the Supreme Court confirmed the well-established rule that an agent's authority to execute a deed on behalf of a principal must be conferred in writing—e.g., by the express terms of the power of attorney. The Supreme Court explained the rationale for this rule as follows: "The Court of Appeal correctly determined that [the attorney-in-fact] was not authorized to sign the deed as [the principal's] agent. A deed is a written instrument conveying or transferring the title to real property; it is an executed conveyance and operates as a present transfer of the real property.… [¶] An agent's authority to execute a deed on behalf of a principal must be conferred in writing. Civil Code section 1091 provides, in pertinent part: 'An estate in real property … can be transferred only by operation of law, or by an instrument in writing, subscribed by the party disposing of the same, or by his agent thereunto authorized by writing.' [¶] Moreover, the 'equal dignities' rule of Civil Code section 2309 … provides that a principal's *oral* authorization to an agent 'is sufficient for any purpose, except that an authority to enter into a contract required by law to be in writing can only be given by an instrument in writing.' The deed in this matter, as a present transfer of property, fell squarely within this rule.… [¶] While [the attorney-in-fact] had written authority from [the principal] in the form of a power of attorney, that document specified that she had only the power to sell, convey, and transfer his real property. By law, she lacked authority to convey the property to herself as a gift. 'A power of attorney conferring authority to sell, exchange, transfer or convey real property for the benefit of the principal does not authorize a conveyance as a gift or without substantial consideration [citations]; and a conveyance without the scope of the power conferred is void.' (*Shields v. Shields*[, *supra,*] 200 Cal.App.2d 99, 101.) [¶] Nor was the gift authorized by Probate Code section 4264, which provides that a power of attorney may not be construed to grant authority to an attorney-in-fact to '[m]ake or revoke a gift of the

principal's property in trust or otherwise' unless such act is 'expressly authorized in the power of attorney.' (Prob. Code, § 4264, subd. (c).)" (*Estate of Stephens, supra*, 28 Cal.4th at pp. 671–672.)

In *Estate of Stephens, supra*, 28 Cal.4th 665 after conceding that the attorney-in-fact lacked written authority to execute the deed, the parties seeking to affirm the transaction argued the execution of the deed had been "ratified" by the principal's oral statements. (*Id*. at pp. 672–673.) The Supreme Court rejected that argument because a valid ratification of the deed would have to be in writing: "[J]ust as an agent's authority to execute a deed must be in writing, so also must a principal's ratification of an invalid execution be in writing." (*Id*. at p. 673.)[1]

Here, the trial court found that the two grant deeds executed by Mendoza were, in substance, donative transfers or gifts. In other words, they were not for full and adequate consideration. (See *Jenkins v. Teegarden* (2014) 230 Cal.App.4th 1128, 1139, 1141–1142.) In the present appeal, neither party has challenged the trial court's finding on that issue, which in any event is clearly supported by substantial evidence in the record.[2] Applying the law summarized above, we conclude that Mendoza did not have authority under the power of attorney to execute the two grant deeds conveying the properties to himself as a gift or without adequate consideration. Accordingly, the two grant deeds are void, and Mendoza's testimony that Father Fierros orally assented to the real property

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[1] The Supreme Court went on to examine the argument that the person signing the deed in that case acted as an "amanuensis" in that she "performed a mere mechanical function in signing [the principal's] name to the deed." (*Estate of Stephens, supra*, 28 Cal.4th at p. 674.) We shall address the amanuensis issue, briefly, herein below.

[2] The substantial evidence included that Father Fierros paid the entire purchase price on both properties, which have appreciated and are worth about $160,000 to $180,000, and $230,000, respectively; whereas Mendoza testified he contributed about 50 percent of the cost of repairs and renovations for the West 15th Place property and approximately 50 percent of the repairs for the last four years of work on the Thomas Way property. Moreover, the deeds themselves stated they were gifts.

conveyances does not make them valid. (*Estate of Stephens*, *supra*, 28 Cal.4th 665, 672; *Shields v. Shields*, *supra*, 200 Cal.App.2d 99, 101; *Estate of Huston*, *supra*, 51 Cal.App.4th at p. 1726.)

The trial court made an error of law when it decided the grant deeds could be deemed valid—even in the absence of an authorized signature—if Mendoza simply could rebut a statutory presumption of undue influence under Probate Code section 21380. That approach clearly put the cart before the horse. There first had to be an authorized signature to carry out the conveyance. As noted, a transfer of real property must be signed by the transferor or an agent having written authority. (Civ. Code, § 1091 ["[a]n estate in real property … can be transferred only by operation of law, or by an instrument in writing, subscribed by the party disposing of the same, or by his agent thereunto authorized by writing"].) Since that did not occur here, the grant deeds were and are void.

III. Mendoza Was Not Acting As an "Amanuensis"

We briefly address one additional theory raised in the trial court—namely, whether Mendoza was acting as an amanuensis.

Where under the express direction of the grantor, a person signs the grantor's name to a deed or other document as a mere mechanical act, acting in effect as an extension or instrumentality of the grantor at that moment, the signature may be deemed valid under the amanuensis rule even though the authority to sign the grantor's name was not given in writing. (*Estate of Stephens*, *supra*, 28 Cal.4th at pp. 670–671, 674–675.) In such cases, the grantor is not so much delegating discretionary authority to an agent to sign the deed but is, in effect, signing the deed himself using the instrumentality of the amanuensis. (*Id*. at p. 675.) The signature is deemed to be that of the grantor. (*Id*. at p. 671.) The amanuensis rule is an exception to the rule that authority to execute a deed must be given in writing. (*Id*. at p. 678 (dis. opn. of Kennard, J.).)

In *Estate of Stephens*, the Supreme Court considered the applicable legal standard in the situation of an "interested" amanuensis—that is, someone who would directly benefit from the transfer of title. (*Estate of Stephens*, *supra*, 28 Cal.4th at p. 676.) The court concluded that the validity of a transfer signed by an interested amanuensis must be examined under a "heightened level of judicial scrutiny." (*Id*. at p. 677.) Under such scrutiny, the signing of a grantor's name by an interested amanuensis would be presumed invalid: "The amanuensis rule is an exception to Civil Code sections 2309 and 2310 and also operates as an exception to Probate Code section 4264, subdivision (c), which prohibits attorneys-in-fact from making gifts of property to themselves. Because unscrupulous parties could attempt to use the amanuensis rule to sidestep the protections contained in these code sections, we hold that the signing of a grantor's name by an interested amanuensis must be presumed invalid. In such a case, the interested amanuensis bears the burden to show that his or her signing of the grantor's name was a mechanical act in that the grantor intended to sign the document using the instrumentality of the amanuensis." (*Id*. at pp. 677–678, fns. omitted.)

The Supreme Court held the presumption of invalidity was rebutted in that case because there was overwhelming evidence that the grantor, who was blind, expressly instructed his daughter to sign his name to the deed. There were disinterested witnesses of the grantor's instructions to his daughter, and the grantor later ratified his actions. (*Estate of Stephens*, *supra*, 28 Cal.4th at pp. 669–670, 678, fn. 7.) The Supreme Court further noted, in answer to concerns expressed in the dissenting opinion, that an interested amanuensis would be unlikely to succeed in rebutting the presumption of invalidity based solely on his or her own uncorroborated testimony. (*Id*. at p. 678, fn. 7.)

In the present case, after the trial court heard the evidence at trial and considered the parties' trial briefs, the trial court ordered supplemental briefing on the issue of whether the amanuensis rule explained in *Estate of Stephens* may potentially apply to Mendoza's execution of the grant deeds in this case. The parties provided such

supplemental briefing, which was considered by the trial court. In the trial court's ruling, it ultimately found that Mendoza "did not act as the 'amanuensis' " of Father Fierros but acted pursuant to the power of attorney because (i) Mendoza signed the deeds as attorney-in-fact and (ii) there was no testimony that Father Fierros ratified the grant deeds.

In this appeal, neither party challenges the trial court's finding that Mendoza signed the grant deeds in his capacity as attorney-in-fact under the power of attorney, and not as an amanuensis. Guzman argues the trial court correctly resolved the issue; Mendoza does not address the issue at all in his brief as respondent. In any event, we note that substantial evidence clearly supports the trial court's determination. Mendoza testified that he signed the grant deeds as Father Fierros's attorney-in-fact, which was how the grant deeds were expressly prepared by the notary, and Mendoza admitted the notary saw the power of attorney when the grant deeds were prepared and signed. Mendoza signed Father Fierros's name and then wrote on the grant deeds, "by Juan Medina Mendoza his Atty in Fact." By statute, that is precisely how an attorney-in-fact is expected to sign something in his or her capacity as the attorney-in-fact. (Civ. Code, § 1095.) Furthermore, unlike the circumstances in *Estate of Stephens*, here there were no disinterested witnesses corroborating the nature of the oral instructions given to Mendoza by Father Fierros, and there was no subsequent oral ratification of the deed after it was signed.

In short, not only has no error been demonstrated as to this issue, but we conclude substantial evidence supported the trial court's resolution of it. That is, on the record before the trial court, it reasonably and properly found that Mendoza executed the grant deeds in his capacity as attorney-in-fact under the power of attorney, not as an amanuensis. Therefore, the amanuensis rule will not supply a means to salvage the validity of the grant deeds.

What remains is our conclusion discussed herein above; namely, that because Mendoza did not have authority under the power of attorney to execute the grant deeds conveying the properties to himself as a gift or without adequate consideration, the grant deeds were and are void.

DISPOSITION

The order is reversed, and the matter is remanded to the trial court with directions to enter a new order granting the petition, voiding the grant deeds, and confirming title in appellant Guzman as personal representative of the estate. Costs on appeal are awarded to Guzman.

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LEVY, Acting P.J.

WE CONCUR:

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FRANSON, J.

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PEÑA, J.